IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5523 of 2006
With
SPECIAL CIVIL APPLICATION No. 5524 of 2006
With
SPECIAL CIVIL APPLICATION No. 5810 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Petitioner(s)
Versus
SABBIR GULAM RASUL - Respondent(s)

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Appearance :
MR JJ YAJNIK for Petitioner(s) : 1 - 3.
MR YM THAKKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/04/2007

ORAL JUDGMENT

1. Since identical issues are involved in these

petitions they have been heard together and are being disposed of by this common order.

2. In these petitions, the petitioners i.e. Western Railway and its authorities have challenged a common interim order dated 22nd July, 2005, passed by the Presiding Officer, 7th Fast Track Court, Panchmahals at Godhra in Misc. Civil Appeal No.26/2005.

3. Shortly stated the controversy arise this wise :

3.1 The opponents in these petitions are license holders who are small vendors holding their stalls on Godhra Railway Station. They have been given license since sometime by the railway authorities. The stall holders had approached learned Civil Judge(SD), Godhra by filing regular civil suits nos.57/05 to 59/05 challenged the revision of license fees being collected by the Railways for permitting them to do their business at the Railway Station. They had also prayed for interim injunction preventing the Railway authorities from collecting license fees at revised rates.

3.2 Learned trial Judge declined to grant such injunction and rejected the applications filed by the plaintiffs. The plaintiffs-stall holders therefore, filed the above-mentioned Misc. Civil Appeal no.26/05 and connected

matters before the District Court, Godhra. These appeals were consolidated and disposed of by common judgement dated 22nd July, 2005.

3.3 Learned Judge in his impugned order was pleased to direct the plaintiffs to deposit 40% of the amount demanded by the Railway administration within two months from the date of decision on which condition the authorities were prevented from interfering with the plaintiffs running their business. It was further directed that "...Railway administration shall go for realistic reassessment pursuance to the circular of Western Railway dt.15-9-2004, very soon."

3.4 The Railway administration has challenged the said order contending inter-alia that the license fees were revised after undertaking the procedure as laid down by Railway circulars. It was contended that civil Court ought not to have interfered with the contractual matter. It was further contended that for similar circumstances, this Court as well as the Apex Court have held that it is within the powers of Railway authorities to revise the license fees periodically.

3.5 On the other hand on part of the respondent, it is contended that the impugned order calls for no interference. It is further

submitted that despite the directions for undertaking reassessment expeditiously, the Railway administration has yet not finalized this exercise and has thus disregarded the order passed by the District Court though no stay was granted by this Court in the present group of petitions.

4. Having heard learned advocates appearing for the parties at some length, I find that it is not necessary to decide the legal issues arising in these petitions. Considering certain peculiar facts and circumstances of the case, I find that ends of justice will be served if the petitions are disposed of by granting certain directions.

5. During the course of arguments, it was conveyed by learned advocate Shri Yagnik for the petitioners that pursuant to the above noted directions issued by the District Court in the impugned judgement, the Railway authorities have already completed the procedure for reassessment. It may be noted that the said directions came to be issued by learned Judge in background of the allegations of the plaintiffs that earlier assessment, was not as per the circulars of the Railway authorities, was not properly undertaken and the ultimate rate revision of license fees was grossly unrealistic and exorbitant.

5.1 Learned advocate Shri Yagnik further submitted that though the entire exercise of reassessment is over at the level of DRM, the same has yet to be approved by higher authorities which approval is necessary as per the procedure. He assured the Court that same shall be done expeditiously. Under the instructions, he clarified that as and when the final decision is taken in this regard, the same shall hold the field so far as Godhra Railway Station is concerned and the Railway authorities shall implement such revised rates for license fees if and as may be approved. He however, clarified that benefits thereof can be made available to the present respondents only after fully complying with the directions contained in the impugned order.

5.2 He further submitted that respondents herein must at-least comply with the requirement of depositing 40% of the demand made by the Railway authorities as per the interim arrangement provided by the District Court.

6. On the other hand, learned advocate Shri Thakkar for the respondents stated that all the respondents have complied with the directions contained in the impugned order and have been depositing with the Railway authorities the license fees as per the interim arrangement

provided therein. He however, submitted that if there is any shortfall and the Railway authorities point out the same to them they shall make good the deficit within a month from today.

7. In view of above position, I find that when the Railway authorities are in the process of undertaking a fresh exercise for assessment and that when this exercise is at a fag end of its conclusion, these petitions can be disposed of by giving suitable directions in this regard. Under the circumstances, these petitions are disposed of by giving following directions :

1) The petitioners shall complete the exercise of fresh assessment by taking up a final decision thereof latest by 31st May, 2007.

2) Until such time this is done, interim arrangement granted by learned Judge, Godhra shall continue considering these petitions as special case and in peculiar facts and circumstances of these cases.

3) The respondents shall continue to deposit the license fees at the rate prescribed under the impugned order and shall also ensure that the deficit fee, if any, is paid up also by 31st May, 2007.

8. I have expressed no opinion on rival contentions. This order is passed on the basis of peculiar facts arising in these cases and lays down no general principal of law or guidelines. It will be open for the respondents to take suitable measures in accordance with law once the Railway administration takes up a fresh decision as provided here-in-above. These orders dispose of the present petitions.

9. With these directions, petitions are disposed of. Rule made absolute to the above extent. No order as to costs.

(Akil Kureshi,J.)

(raghu)